

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7746

Petition of Vermont Telephone Company, Inc. for a)
Certificate of Public Good to Own and Operate a Cable)
Television System to Provide Services in the)
Municipalities of Andover, Athens, Bridgewater,)
Chester, Clarendon, Danby, Dorset, Grafton, Hartland,)
Ira, Killington, Middletown Springs, Mount Holly,)
Mount Tabor, Pawlet, Plymouth, Reading, Rockingham,)
Rupert, Shrewsbury, Springfield, Tinmouth,)
Wallingford, Weathersfield, Wells, West Windsor,)
Westminster, Windham, and Woodstock, Vermont)
Pursuant to 30 V.S.A. §§ 503, 504)

Order entered: 9/20/2011

I. INTRODUCTION

Vermont Telephone Company, Inc. ("VTel" or the "Company"), has petitioned the Vermont Public Service Board ("Board") for a certificate of public good ("CPG" or "Certificate"), pursuant to 30 V.S.A. §§ 503 and 504, to operate a cable television system in the Company's existing service areas within the municipalities of Andover, Athens, Bridgewater, Chester, Clarendon, Danby, Dorset, Grafton, Hartland, Ira, Killington, Middletown Springs, Mount Holly, Mount Tabor, Pawlet, Plymouth, Reading, Rockingham, Rupert, Shrewsbury, Springfield, Tinmouth, Wallingford, Weathersfield, Wells, West Windsor, Westminster, Windham, and Woodstock, Vermont (the "VTel Service Territory").

Having read and considered VTel's application and the evidence of record, and based on the findings of fact contained in Part III of this decision, we find that the approvals sought by the Company should be granted with conditions, and that with these conditions it will promote the public good for VTel to own and operate a cable-television system within its designated service territory in Vermont.

II. PROCEDURAL HISTORY

On June 30, 2011, VTel, pursuant to 30 V.S.A. §§ 503 and 504 and the rules and regulations of the Board, filed a petition and an Application for a Certificate of Public Good for the Operation of a CATV System ("CATV Application"), seeking to provide cable television services ("CATV") within and throughout the communities listed above.¹ At that time, VTel also submitted (1) the prefiled, direct testimony and exhibits of Justin Robinson and Fran Stocker; and (2) an executed Memorandum of Understanding between VTel and the Vermont Department of Public Service (the "Department" or "DPS") pursuant to which the DPS agreed to support the CATV Application (the "VTel-DPS MOU").

On July 25, 2011, a Board Hearing Officer convened a prehearing conference that was attended by representatives of VTel, New England Cable Telecommunications Association, Inc. ("NECTA"), Vermont Access Network ("VAN") and the Department.

On August 8, 2011, NECTA and VAN respectively filed motions to intervene in this docket. Neither motion was opposed.

On August 10, 2011, the Hearing Officer issued an Order granting permissive intervenor status to NECTA and VAN. In that same Order, the Hearing Officer established a procedural schedule and advised the parties that the Board would exercise its discretion pursuant to 3 V.S.A. §811 to issue a final order after reading the record of the case.

On August 15, 2011, a technical hearing was duly noticed in this proceeding for August 22, 2011.

On August 22, 2011, a public hearing was convened via Vermont Interactive Television Network at the following sites: White River Junction, Springfield, and Rutland. Several members of the public spoke at this hearing, all of whom supported approval of VTel's CATV Application.

Also on August 22, 2011, NECTA served discovery requests on VTel.²

1. VTel served copies of its petition, and all supporting documentation, on the Department and the clerks of all municipalities encompassed within the VTel Service Territory. Copies of the petition also were served on the clerks of all municipalities adjacent to the VTel Service Territory, and the superintendent of all school systems encompassed in the VTel Service Territory.

2. NECTA subsequently withdrew these discovery requests on August 26, 2011.

On August 26, 2011, the following three settlements were executed concerning this Docket:

- VTel, the Department, and NECTA entered into an agreement reflecting, among other things, the terms of a mutually acceptable CPG (the "CPG MOU"). The CPG MOU provided that the Board should issue the CPG attached to the CPG MOU, and that the parties stipulated to the admission of all prefiled evidence in this docket without the need for an evidentiary hearing, and that the Board may issue a final order consistent with the terms of the CPG MOU.
- VTel and VAN entered into an MOU (the "VTel-VAN MOU") in which VTel committed to begin working cooperatively and in good faith within the following 60 days with individual Access Management Organizations ("AMOs"), to develop Public, Educational and Governmental ("PEG") Access Agreements. The VTel-VAN MOU included provisions that relate to, among other things: (1) VTel designation of AMOs within the proposed Service Territory already designated by Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC ("Comcast"); (2) payment of 5% of gross revenues from cable television operations for AMO operating expenses; (3) activation of PEG channels; and (4) distribution of PEG programming, and provision of live, two-way capability to certain municipal buildings.
- VTel and the Department entered into an amended MOU (the "Amended VTel-DPS MOU") that, among other things, added a provision that, upon issuance of a CPG in this proceeding, revenues from internet access associated with any service VTel provides in the VTel Service Territory will be included for purposes of calculating the gross revenue tax under 30 V.S.A. § 22.

On August 29, 2011, the Hearing Officer canceled the technical hearing due to the parties' stipulation to the admission of all prefiled evidence in this Docket without the need for an evidentiary hearing.³

On August 30, 2011, VAN prefiled the direct testimony of Robert Chapman, the President of VAN's Board of Directors, in support of the VTel-VAN MOU.⁴

III. FINDINGS OF FACT AND ANALYSIS

A. VTel

1. VTel is a corporation organized and existing under the laws of the State of Delaware. VTel is a wholly owned subsidiary of Vermont National Telephone Company, Inc., a Delaware corporation with a principal office at 354 River Street, Springfield, Vermont, 05156. CATV Application at 2.

2. VTel has all of the necessary authority to transact business in Vermont. VTel maintains its offices at 354 River Street, Springfield, Vermont, 05156. VTel's trade name is duly registered in the records of the Vermont Secretary of State's office. VTel is a company in good standing in the State of Vermont. CATV Application at 2; CATV Application at Attachment A.

3. VTel has been providing telecommunications service in Vermont pursuant to a CPG issued by the Board in Dockets 5716/5717 on June 14, 1994.

4. VTel presently serves over 15,000 addresses within a service area of 729.3 square miles, using over 1,000 miles of plant. CATV Application at Attachment A.

5. VTel proposes to provide cable television services within the Company's existing service area for local telecommunications service, which presently is defined by the telephone exchanges of Bridgewater, Chester, Cuttingsville, Danby, Grafton, Hartland, Middletown

3. CPG MOU at 2. We note that VAN is not a party to the evidentiary stipulation in the CPG MOU. Nor does the VTel-VAN MOU expressly state that VAN has stipulated to the admission of all prefiled evidence in this Docket without the need for an evidentiary hearing. To date, VAN has not objected to either the cancellation of the evidentiary hearing that was scheduled for August 29, 2011, nor has VAN objected to the terms of the CPG MOU or the Amended VTel-DPS MOU. Therefore, we conclude that VAN has no objection to the admission of all prefiled evidence in this Docket without need of an evidentiary hearing.

4. Consistent with the evidentiary stipulation in the CPG MOU between VTel, the Department and NECTA, Mr. Chapman's direct testimony hereby is admitted into the evidentiary record.

Springs, Mount Holly, Pawlet, Saxtons River, Sherburne, Springfield, and Wallingford, and which includes all or portions of the following municipalities: Andover, Athens, Bridgewater, Chester, Clarendon, Danby, Dorset, Grafton, Hartland, Ira, Killington, Middletown Springs, Mount Holly, Mount Tabor, Pawlet, Plymouth, Reading, Rockingham, Rupert, Shrewsbury, Springfield, Tinmouth, Wallingford, Weathersfield, Wells, West Windsor, Westminster, Windham, and Woodstock, Vermont (the "Proposed Service Territory"). VTel proposes to offer cable television services under the VTel trade name within the Service Territory. Robinson pf. at 2; CATV Application at 1; CATV Application at Attachment B.

B. The VTel Project

6. In 2010, the United States Department of Agriculture's Rural Utilities Service ("RUS") approved the funding (the "RUS Funds") necessary to enable VTel to build the Wireless Open World project ("WOW Project"). Among other things, the WOW Project will facilitate the deployment of high-speed Fiber-to-the-Home to provide Internet Protocol ("IP") based video, voice, and internet access services to VTel's existing telecommunications customers, including the cable television services that are the subject of this Petition. The WOW Project also includes construction of a wireless network that will provide broadband coverage to many parts of Vermont. Robinson pf. at 2.

7. The release to VTel of the federal RUS Funds for the WOW Project, including the proposed 4G wireless network, is contingent upon VTel obtaining the CATV CPG at issue in this Docket. Robinson pf. at 2.

C. Statutory and EMCO Criteria⁵

(1) Statutory Criteria — 30 V.S.A. § 504(b)

Designation of adequate channel capacity and appropriate facilities for public, educational, or governmental use

8. VTel's optical fiber network has been designed to be adequate and appropriate for public, educational, and governmental ("PEG") use. Robinson pf. at 4.

5. The "EMCO" criteria are set out in PSB Rule 8.214 (B).

9. To the extent required under Rule 8.000, VTel will designate and activate at least one and up to three or more PEG channels to each designated Access Management Organization ("AMO"). Chapman pf. at 6.

10. There are currently many AMOs in Vermont, and VTel intends to work with AMOs to facilitate PEG programming in the Service Area. VTel will advertise the availability of channel capacity and will invite requests for PEG channels in accordance with Board Rule 8.405. Robinson pf. at 5.

11. VTel will make facilities and funding for PEG Channels available in accordance with Board Rules 8.415 and 8.417. Robinson pf. at 5; Chapman pf. at 6.

12. VTel will ensure its PEG access practices comply with PEG access provisions of Board Rules 8.401 through 8.435. Robinson pf. at 5; Chapman pf. at 6.

A reasonably broad range of public, educational and governmental programming

13. VTel will provide a reasonably broad range of PEG programming. Robinson pf. at 4.

14. Until one or more AMOs create programming for areas served by the VTel network, VTel will broadcast a scrolling bulletin board which will identify which designated AMO's video will soon be seen on that channel, and which will be available for publicizing local events in addition to publicizing the availability of channel capacity and other non-commercial services VTel might itself develop. Chapman pf. at 5.

The prohibition of discrimination among customers of basic service

15. VTel will not discriminate among customers regarding the type of service they receive. Robinson pf. at 7.

Basic service in a competitive market and if a competitive market does not exist, that the system provides basic service at reasonable rates determined in accordance with section 218 of Title 30

16. VTel proposes to offer cable television service consisting of channel line-ups substantially similar to the channel line-ups and tiers offered by many cable television companies in the U.S. today. VTel submitted a representative offering, reflecting the current Burlington

Telecom channel lineup. The actual channel offering will be developed at a later date. VTel cable service will consist of a menu of video offerings, including at least 50 channels. The basic cable service package will include at least 5 channels, for a price that is competitive with other cable services. Extended and premium channels will also be offered at competitive prices. Robinson pf. at 4; exh. Pet.-JR-1 (Attachment C).

17. A rotating selection of movies and television shows will be available for customers as Video on Demand. Robinson pf. at 4.

18. VTel is expected to provide basic service at reasonable prices. VTel submitted a representative rate schedule, reflecting the current Burlington Telecom rate schedule. The actual rate schedule will be developed at a later date. Robinson pf. at 4.

Discussion

VTel meets the statutory criteria of § 504(b). VTel is committed to reaching an agreement to provide specific operational and capital funding support for the AMOs. In addition, VTel's fiber optic network will be more than adequate to meet the community's public access needs into the future. Finally, VTel's system will provide basic service at competitive rates.

(2) Statutory Criteria — § 504(c)

A reasonable quality of service for basic, premium or otherwise, having regard to available technology, subscriber interest and cost

19. The internet-protocol-based technology to be used by VTel will ensure a reasonable quality of service for its CATV offerings. Robinson pf. at 4.

20. VTel's system will provide broadband video services to consumers using Fiber-to-the-Home, and any other technologies available to VTel and appropriate for the proposed service, and will comply with applicable requirements relating to the quality of the system. Robinson pf. at 7.

21. VTel will provide basic service and expanded services which include several tiers and premium channels at reasonable costs to its subscribers and will ensure a reasonable quality of service in its service offerings pursuant to 30 V.S.A. §§ 504(b)(5) and (c)(1). Robinson pf. at 4

Construction, including installation, which conforms to all applicable state and federal laws and regulations and the National Electric Safety Code

22. VTel will ensure that all construction and installations will conform to the National Electric Safety Code ("NESC"), the "Safety Rules for the Installation and Maintenance of Electric Supply and Communications Lines" of the National Bureau of Standards, and all applicable municipal, state and federal laws, regulations and ordinances. Robinson pf. at 3.

A competent staff sufficient to provide adequate and prompt service and to respond quickly and comprehensively to customer and Department complaints and problems

23. VTel is an experienced provider of telecommunications services in Vermont and has the requisite management and consumer-relations skills to operate a cable television business. The cable television operations will be managed by VTel's staff. Robinson pf. at 3.

24. VTel will provide customer support through its existing service center, which is located in the main office in Springfield, Vermont, and provides direct customer account support for VTel's existing subscriber base. This experienced service center staff will service the VTel video customer base. Robinson pf. at 3.

Unless waived by the Board, an office which shall be open during usual business hours, have a listed toll-free telephone so that complaints and requests for repairs or adjustments may be received

25. VTel Customer service personnel will be available to take customer calls by means of the telephone during the hours of 8:00 am to 5:00 pm, Monday through Saturday. Robinson pf. at 3.

Discussion

VTel has not requested that we waive the requirement of having a listed toll-free telephone number so that complaints and requests for repairs or adjustments may be received. Accordingly, we hereby require VTel to list and maintain such a toll-free number. If VTel wishes to be relieved of this requirement, then the Company must petition the Board for a waiver.

Reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices

26. VTel will abide by Board rules that are applicable to cable television systems with respect to consumer protection standards, disconnections, and consumer complaints. Robinson pf. at 5.

27. VTel's customer complaints regarding disconnection, deposits, or billing practices have been very low, and VTel will endeavor to maintain this standard of performance. Robinson pf. at 5.

28. VTel will abide by the "CAPI Stipulated Criteria for CATV Service Providers" established by the Department's Consumer Affairs and Public Information Division ("CAPI"). Robinson pf. at 5.

29. Where a customer requests a line extension for both cable and telephone service, VTel will apply whichever policy is less expensive for the customer. Robinson pf. at 5-6.

30. VTel will make installation and trouble repair support through its Installation and Repair ("I&R") employees, who provide service for I&R orders Monday through Friday, 8:00 am to 5:00 pm, and will provide after-hours and weekend support for out-of-service communications trouble cases on an on-call basis. Robinson pf. at 3.

31. Installations for newly established properties and upgrades to existing properties will sometimes require a premise visit from an I&R technician to provide the appropriate Optical Network Terminal ("ONT"), to provision equipment and cabling to service the ONT, to establish connectivity to customer premise equipment and wiring, and to complete site installation of supporting inside-wiring and video set-top boxes. Robinson pf. at 3.

Discussion

VTel meets the statutory criteria of § 504(c). The advanced architecture of VTel's system will assure the high technical quality of its services. Further, the Company's planned channel offerings and agreements with local broadcasters will assure ample programming content. VTel will construct its system in accordance with National Electric Safety Code standards and other applicable municipal, state and federal laws, regulations and ordinances. VTel has a seasoned staff with prior customer service experience from the Company's existing telecommunications

operations in Vermont. Therefore, VTel's staff will be capable of providing adequate and prompt customer service. In addition, the conditions in the proposed CPG will impose specific customer service and performance measures on VTel, including requiring VTel to conform to federal customer service standards, to monitor its performance relative to federal and Board-established customer service standards, and to submit monitoring and corrective action reports quarterly to the Department and Board. Further, VTel will have trained representatives available during business hours and a service technician on-call outside of normal business hours. Finally, VTel has expressed a commitment to adhere to rules and policies for disconnections, customer deposits and billing that conform to the Board's administrative rules.

(3) The "EMCO" Criteria of Rule 8.214(B)

Financial soundness and stability, both of the applicant generally and the particular proposal

32. VTel is in sound financial condition and can fulfill all financial requirements in connection with the operation of a cable television system in Vermont. Stocker pf. at 2.

Discussion

VTel meets this criterion. VTel's stability is evident from the fact that it already holds a CPG for provisioning telecommunications services in Vermont and has been awarded substantial funding from the RUS to construct and deploy the WOW Project.

The present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future, and the ability to provide public access

33. VTel intends to offer cable television service consisting of channel line-ups and tiers that are substantially similar to the service offerings of many other cable television companies in the United States. Robinson pf. at 4; exh. JR-1 (CATV Application Attachment C).

34. VTel's regulatory commitments, service offerings and system technology will enable the Company to provide robust support for public access programming. Findings 19, 20, 21 and 33, above.

Discussion

VTel meets this criterion. The VTel system will be configured to handle hundreds of channels, and will be able to accommodate more, if needed. Further, VTel proposes rates that will be reasonable. Finally, the Fiber-to-the-Home system VTel intends to build will permit VTel to offer programming that meets or exceeds the community's needs for public access for the foreseeable future and will provide more than adequate upgrade and expansion capabilities.

The commitment to a construction and in-service schedule

35. VTel expects to complete construction of facilities to serve those customers currently served by VTel within the VTel Service Territory within two years of receiving a CPG. Robinson pf. at 8.

Discussion

VTel meets this criterion. The construction schedule proposed by VTel is reasonable.

The experience and ability of the applicant to run and manage a cable TV system

36. VTel is an experienced provider of telecommunications services in Vermont and has the requisite management and consumer-relations skills to operate a cable television business. The cable television operations will be managed by VTel's staff. Robinson pf. at 3.

Discussion

VTel meets this criterion. Existing VTel staff possess sufficient expertise for the long-term operation of the Company's proposed CATV system.

The rates proposed to be charged to customers

37. VTel will maintain a copy of its schedules of rates, terms, and conditions of service at its business offices, as required by Board Rule 8.312(A). Robinson pf. at 8.

38. VTel will competitively price both its basic cable service package and its extended and premium channel offerings. Robinson pf. at 4; exh. JR-1 (Attachment C); finding 16, above.

Discussion

VTel meets this criterion. VTel has proposed a reasonable approach to setting its rates. We expect VTel to set reasonable prices for the services it will offer in Vermont.

Consumer policies, particularly re: complaints and problems

39. VTel will abide by the Board's rules that are applicable to cable television systems with respect to consumer protection standards and consumer complaints. Robinson pf. at 8.

40. VTel commits to applying the Board's telephone disconnection rules and requirements to disconnections of telephone service that is provided either on a stand-alone basis or as part of a package that is bundled with cable television or other service. Where a single bill covers telephone and another service provided as separate (i.e., unbundled) services and the customer remits a partial payment without indicating how it is to be allocated among services, VTel will allocate the payment first to telephone service. Robinson pf. at 6.

Discussion

VTel meets this criterion. In addition, the proposed CPG includes conditions relating to customer care and the Service Quality Plan.

Availability of service to maximum number of residences

41. Each of VTel's current telecommunications subscribers who requests VTel cable television service will have access to that service, once fiber facilities have been installed. Robinson pf. at 9.

42. With regard to requests for line extensions to provide cable service, VTel will abide by Board Rule 8.000, including Rule 8.313, and will file a statement of the Company's policy on expansions of service into unserved areas as a tariff for the Board's approval. Robinson pf. at 5-6.

Discussion

VTel meets this criterion. VTel will be able to offer cable television service to any current subscriber to its telecommunications service. VTel further has committed to serve customers throughout the VTel Service Territory, subject to VTel's forthcoming cable television line extension tariff.

The quality of the engineering and materials used in the system

43. VTel's system will be engineered and constructed to provide Fiber-to-the-Home service for its subscribers, using all technologies available to VTel and appropriate for the proposed service, and will comply with applicable requirements relating to the quality of engineering and materials for the system. Robinson pf. at 7; findings 6, 20 and 22, above.

Discussion

VTel meets this criterion. The system VTel intends to build will use state-of-the-art technology and will be designed and built in accordance with applicable federal standards.

Logical fit with neighboring systems

44. Comcast provides cable television service in most of Vermont and is the only cable television provider in the VTel Service Territory. Some portions of the VTel Service Territory currently have no access to cable television service, and consequently VTel's ownership and operation of a cable television system in the VTel Service Territory will promote the public good by enabling the provision of cable television service in areas not served by other cable television providers. Robinson pf. at 2.

Discussion

VTel meets this criterion because VTel's system will expand the availability of cable television service in its existing telecommunications footprint. Furthermore, VTel's introduction of a cable television service offering will promote the public good by bringing competition to a market where there presently is only one cable service provider.

IV. CONCLUSION

The evidence in the record demonstrates that VTel meets the EMCO and statutory criteria for issuance of a CPG. Further, the addition of a competitor in the VTel market is an added benefit to consumers and consistent with both federal and state law and policy. Therefore, we find that issuance of a CPG to VTel to provide CATV services throughout the VTel territory will promote the general good of the state. The Order and CPG we have issued today are consistent in all material respects with the terms of the CPG MOU and the proposed CPG attached to that agreement⁶. Our Order and CPG are also consistent with the Amended VTel-DPS MOU and the VTel-VAN MOU.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. Vermont Telephone Company, Inc. ("VTel" or the "Company") meets each of the requirements established by 30 V.S.A. § 504 and Board Rule 8.214 to own and operate a cable television system in Vermont, and the Board shall issue a Certificate of Public Good ("CPG") to that effect, which certificate shall take effect as of the date of this Order.
2. Subject to the conditions imposed in this Order and the CPG that accompanies this Order, the general good of the state will be promoted by the issuance of a CPG to VTel, pursuant to 30 V.S.A. §§ 503 and 504, to operate a cable television system in the Company's existing service areas within the municipalities of Andover, Athens, Bridgewater, Chester, Clarendon, Danby, Dorset, Grafton, Hartland, Ira, Killington, Middletown Springs, Mount Holly, Mount Tabor, Pawlet, Plymouth, Reading, Rockingham, Rupert, Shrewsbury, Springfield, Tinmouth, Wallingford, Weathersfield, Wells, West Windsor, Westminster, Windham, and Woodstock, Vermont.

6. The CPG we have issued today is different from the proposed CPG attached to the CPG MOU. These changes are not material, but were made so that the language of the CPG would conform with the Board's stylistic conventions.

Dated at Montpelier, Vermont, this 20th day of September, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: September 20, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.